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No. ~~100~~ 7

In the Supreme Court of the United States

OCTOBER TERM, ~~1949~~ 1950

NATIONAL COUNCIL OF AMERICAN-SOVIET
FRIENDSHIP, INC., ET AL., PETITIONERS

u.

HOWARD MCCRATH, ATTORNEY GENERAL OF THE
UNITED STATES, ET AL.

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N PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE DIS-
TRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 554

**NATIONAL COUNCIL OF AMERICAN-SOVIET
FRIENDSHIP, INC., ET AL., PETITIONERS**

v.

**J. HOWARD McGRATH, ATTORNEY GENERAL OF THE
UNITED STATES, ET AL.**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE DIS-
TRICT OF COLUMBIA CIRCUIT**

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the District of Columbia (R. 17-19) is not reported. The *per curiam* order of the Court of Appeals for the District of Columbia Circuit, affirming on the authority of *Joint Anti-Fascist Refugee Committee v. Clark*, 177 F. 2d 79 (C. A. D. C.), was entered without opinion (R. 20).

JURISDICTION

The judgment of the Court of Appeals was entered on October 25, 1949 (R. 20). The petition for a writ of certiorari was filed on January 23, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether petitioners have any legal standing or right to challenge a designation, made by the Attorney General pursuant to instructions issued by the President under Executive Order 9835, that petitioner National Council of American-Soviet Friendship, Inc., is a communist organization.

STATUTE AND EXECUTIVE ORDER INVOLVED

Section 9A of the Hatch Act, 53 Stat. 1148, 5 U. S. C., Supp. II, 118j, and Executive Order 9835, 12 F. R. 1935, are set forth in the Appendix to the Brief in Opposition in *Joint Anti-Fascist Refugee Committee v. McGrath*, No. 556, this Term.

STATEMENT

This case was brought to challenge the designation by the Attorney General, for the purpose of the Federal government's loyalty program, of petitioner National Council of American-Soviet Friendship, Inc. as a communist organization. The designation of organizations and the publication thereof pursuant to statute and executive order are fully described at pp. 2-4, 17-47, of the Brief in Opposition in the *Joint Anti-Fascist* case, No. 556, this Term.

Petitioners herein, the National Council of American-Soviet Friendship, Inc., the Denver Council of American-Soviet Friendship, and six officers thereof (R. 4-5), allege that they have suffered irreparable injuries as a result of the above described designation and that the actions of respondents "have violated the rights of the plaintiffs guaranteed by the First and Fifth Amendments to the Constitution and are contrary to the Ninth and Tenth Amendments" (R. 13, 16).¹ Specifically, the injuries alleged are these: The National Council and Denver Council, whose avowed purpose is to disseminate educational material concerning the Union of Soviet Socialist Republics in order to strengthen friendly relations between the United States and the Soviet Union (R. 4, 9), have lost members, officers, sponsors, contributions, attendance at meetings, circulation of their publications, acceptance of their exhibits and other materials by educational institutions, have been denied meeting places and radio time, and have been unable to gain the support of federal employees (R. 13-14). It is further claimed that the National Council has been deprived of its status as a tax exempt organization by the Treasury Department (R. 14) and that the personal and professional reputations of

¹ It is also alleged that the designation of the Attorney General was made without the "appropriate investigation and determination" required by Part III, Section 3 of the Executive Order (R. 11-12), and that the National Council does not fall within the subversive categories of the Executive Order (R. 10).

the individual petitioners have been damaged and their opportunities for public and private employment impaired (R. 13-15).

The action was brought on June 29, 1948, to enjoin respondents, the Attorney General and the Chairman and members of the Loyalty Review Board of the Civil Service Commission, from designating and publicizing the name of the National Council, or its affiliates, as a communist organization, to direct respondents to remove the National Council's name from the list of designated communist organizations, to make a public statement of this removal, and to take no action based on the inclusion of the National Council's name in the list of designated communist organizations. Petitioners further prayed for a declaratory judgment that Part III, Section 3, and Part V, Section 2, of Executive Order 9835 are unconstitutional. (R. 16.)

Respondents moved to dismiss the complaint for want of a justiciable controversy between the parties and for failure to state a claim upon which relief can be granted (R. 17). Following a hearing, the District Court, on February 1, 1949, dismissed the complaint (R. 19). The Court of Appeals affirmed *per curiam* (R. 20).

ARGUMENT

The instant case, decided on the authority of *Joint Anti-Fascist Refugee Committee v. Clark*, 177 F. 2d 79 (C.A.D.C.), presents the same issues raised by the petition for writ of certiorari in that case and advances the same major arguments. No.

556, this Term, *sub nom. Joint Anti-Fascist Refugee Committee v. McGrath*. For the reasons stated in our Brief in Opposition in No. 556, we submit that the courts below correctly dismissed the complaint herein on the grounds that no justiciable controversy exists and that petitioners have not stated a cause of action upon which relief can be granted. Our basic position is that the actions complained of do not effect any change in petitioners' legal status; that respondents are absolutely privileged to publish matter, even of a defamatory nature, in the exercise of official duties; and that such publication invades no justiciable legal rights.

Certain narrow contentions in addition to those advanced in No. 556 are made herein. The petition urges that the individual petitioners have standing to sue as persons with a vaguely defined "reasonable expectancy" of future Government employment (R. 15) made *prima facie* ineligible for such employment by reason of their relationship with the National Council (Pet. 25). We think it clear that they do not have such standing. *United Public Workers v. Mitchell*, 330 U. S. 75, 86-91; and see Brief in Opposition in No. 556, pp. 12-14, fn. 7-8.

Petitioners herein also contend that there is a justiciable controversy because the complaint factually alleges that respondents have abridged the rights of petitioners guaranteed by the First Amendment and that this allegation is admitted by the motion to dismiss (Pet. 16). But this allegation, which also appears in the complaint in the

Joint Anti-Fascist case, is a conclusion of law, not a statement of fact, and is certainly not admitted by the motion to dismiss. Similarly, petitioners herein assert that the complaint alleges a failure to make an "appropriate investigation and determination" and that this allegation of fact is also admitted by the motion to dismiss (Pet. 27). Again, this is a conclusion of law and not a statement of fact. In alleging there was no "appropriate investigation" petitioners are only summarizing their contention that an "appropriate investigation" requires notice and a hearing.

CONCLUSION

The decision below is correct, and there is no conflict of decisions. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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